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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WALLEN LAWSON,

Plaintiff,

v.

PPG ARCHITECTURAL FINISHES,  
INC.,

Defendant.

Case No. 8:18-CV-00705 JVS-JPR

**DEFENDANT PPG  
ARCHITECTURAL FINISHES,  
INC. POCKET BRIEF IN SUPPORT  
OF EXCLUDING PUNITIVE  
DAMAGES**

Trial Date: April 7, 2025

Time: 9:00 a.m.

Crtrm: 10C

Pursuant to the Court’s request, Defendant PPG Architectural Finishes, Inc. (“PPG” or “Defendant”) respectfully submits this Pocket Brief to request that the Court exclude Plaintiff Wallen Lawson’s (“Plaintiff”) punitive damages claim from consideration by the jury and grant PPG judgment as a matter of law on this issue.<sup>1</sup> Plaintiff has failed to meet the evidentiary burden required by California Civil Code § 3294, which mandates “clear and convincing evidence” of malice, oppression, or fraud by a corporate officer, director, or managing agent acting with advance knowledge, authorization, or ratification in terminating Mr. Lawson’s employment. Based on the evidence presented at trial, Plaintiff cannot carry this burden as a matter of law.

**I. PLAINTIFF HAS NOT MADE, AND CANNOT MAKE, THE REQUISITE SHOWING TO JUSTIFY PUNITIVE DAMAGES PURSUANT TO CAL. CIV. CODE § 3294**

To recover punitive damages against an employer, a plaintiff must demonstrate by clear and convincing evidence that an officer, director or managing agent of the employer acted with oppression, fraud, or malice, or that such individual ratified that conduct. Cal. Civ. Code § 3294. As Plaintiff has failed to prove any of these elements, he is not entitled to punitive damages.

**A. Plaintiff Has Not And Will Not Establish By Clear and Convincing Evidence That Anyone Employed By PPG Acted With Malice Oppression, Or Fraud In Terminating Mr. Lawson’s Employment.**

“Oppression” is defined as “despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.” *Id.* § 3294(c)(2). “Malice” is defined as “conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.” *Id.* § 3294(c)(1).

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 50(a), PPG intends to file a motion for judgment as matter of law as to this issue, and others, following the close of Plaintiff’s case.

1 “Despicable conduct” refers to “conduct which is so vile, base, contemptible,  
2 miserable, wretched or loathsome that it would be looked down upon and despised by  
3 ordinary decent people.” *Tomaselli v. Transamerica Ins. Co.*, 31 Cal. Rptr. 2d 433,  
4 444 (Ct. App. 1994). Fraud is the “intentional misrepresentation, deceit, or  
5 concealment of a material fact known to the defendant with the intention on the part of  
6 the defendant of thereby depriving a person of property or legal rights or otherwise  
7 causing injury.” *Id.* § 3294(c)(3).

8 There is no evidence of such conduct in this case as Plaintiff was terminated  
9 from his employment for failing to perform the most essential duties of his job as a  
10 Territory Manager – developing and delivering sales plans to sell PPG products within  
11 Plaintiff’s territory. After Plaintiff failed to attain his monthly sales quotas for eight of  
12 the prior twelve months, and struggled on consecutive market walks, he was placed on  
13 a Performance Improvement Plan (“PIP”). The goal of the PIP was to help Plaintiff  
14 improve his performance and help him meet the expectations and requirements of his  
15 job. At the conclusion of his initial 60-day PIP, the Company extended the PIP for an  
16 additional 30 days. Despite oversight from Human Resources and Plaintiff’s Regional  
17 Sales Manager and Divisional Manager, Plaintiff was unable to meet the requirements  
18 of his position, and was terminated as a result, devoid of any extreme conduct  
19 whatsoever. In fact, none of the witnesses have testified or will testify to any conduct  
20 by PPG managers rising to the level of “malice” (intent to injure), “oppression”  
21 (conscious disregard of rights), or “fraud” (intent to deceive). Clarence Moore will  
22 testify that he had no retaliatory intent toward Plaintiff and simply held Mr. Lawson  
23 accountable for meeting well-established performance standards. Clarence Moore and  
24 Andy Mayhew will consistently testify that Plaintiff’s termination was based on  
25 legitimate, documented performance deficiencies. Sean Kacsir and Andrew Mayhew  
26 will corroborate that Plaintiff’s performance assessments and termination were  
27 handled in accordance with standard company procedures.

28 The evidence which Plaintiff introduced does not and will not support his

1 underlying claims, let alone satisfy the standard for egregiousness to support punitive  
2 damages. The record is entirely devoid of any extreme comments or actions by any  
3 PPG employee or employees as it relates to Mr. Lawson's termination. As such, **no**  
4 conduct attributable to PPG rises to the level of clear and convincing evidence of  
5 extreme conduct required for an award of punitive damages. *Mathieu v. Norrell Corp.*,  
6 115 Cal.App.4th 1174, 1191 (2004).

7 **B. No Managing Agent Was Involved in the Alleged Conduct.**

8 Plaintiff has not identified any officer, director, or managing agent responsible  
9 for the decision to terminate Plaintiff. There is no evidence that the individuals who  
10 were involved in the decision to terminate Plaintiff – Moore, Mayhew and Kascir –  
11 were officers, directors, or managing agents of PPG. A corporate employer will be  
12 liable for punitive damages based on the acts of an employee only if an “officer,  
13 director, or managing agent” (1) “had advance knowledge of the unfitness of the  
14 employee and employed him or her with a conscious disregard of the rights or safety  
15 of others[,]” or (2) “ratified the wrongful conduct for which the damages are  
16 awarded[,]” or (3) “was personally guilty of oppression, fraud, or malice.” Cal. Civ.  
17 Code § 3294(b). California law thereby avoids imposing liability for punitive damages  
18 on a corporation “for malice of low-level employees which does not reflect the  
19 corporate ‘state of mind’ or the intentions of corporate leaders.” *Cruz v. HomeBase*,  
20 99 Cal. Rptr. 2d 435, 439 (Ct. App. 2000).

21 Employees who “exercise substantial discretionary authority over decisions that  
22 ultimately determine corporate policy” qualify as “managing agents.” *Id.* at 440  
23 (internal quotations, alteration, and citation omitted) (emphasis in original).  
24 “Corporate policy” refers to “the general principles which guide a corporation, or  
25 rules intended to be followed consistently over time in corporate operations.” *Id.* Mere  
26 ability to hire and fire employees does not render a supervisory employee a managing  
27 agent. *White v. Ultramar, Inc.*, 21 Cal. 4th 563, 566, (1999) (holding a plaintiff's  
28 supervisor was not a managing agent, even though the supervisor was the highest

1 ranking employee in Southern California, because he did not have authority to  
2 establish or change corporate policy). A plaintiff must show by clear and convincing  
3 evidence that an employee qualifies as a “managing agent.” *Barton v. Alexander*  
4 *Hamilton Life Ins. Co. of Am.*, 3 Cal. Rptr. 3d 258, 261 (Ct. App. 2003).

5 However, even if it is found that Moore, Mayhew and Kascir terminated  
6 Plaintiff due to retaliatory animus (which they did not), there was no officer, director,  
7 or managing agent who ratified their conduct. Likewise, McKinley’s job title of  
8 “director” places her well below the policy-making level of the corporate hierarchy,  
9 and the evidence showed that McKinley did not meet the definition of a managing  
10 agent, as McKinley’s authority was limited to a particular group of field employees  
11 Territory, Regional Sales, and Divisional Managers who supported PPG business for  
12 the Home Depot, Lowe’s, and Menards, and not affecting larger corporate policy.  
13 (Dkt. 155-7, at 6:16 – 7:12.) More importantly, not only was McKinley not involved  
14 in the decision to terminate Plaintiff, there is no evidence that she was involved in  
15 making decisions related to corporate policy. As such, McKinley was not a managing  
16 agent for PPG. *Kelly-Zurian v. Wohl Shoe Co.*, 22 Cal. App. 4th 397, 421-22 (1994).

17 Beyond the lack of any egregious conduct attributable to a managing agent, the  
18 California Supreme Court has held that an employer’s written policy specifically  
19 forbidding the unlawful conduct at issue “may operate to limit corporate liability for  
20 punitive damages, as long as the employer implements the written policy in good  
21 faith.” *Ultramar*, 21 Cal. 4th at 568, fn. 2; see *Kolstad v. American Dental Ass’n*, 527  
22 U.S. 526, 541-43 (1999) (employer’s adoption and implementation of written policy  
23 against workplace discrimination may shield it from punitive damages liability for  
24 discriminatory acts by its managers). Here, PPG maintained a Global Code of Ethics,  
25 that expressly forbid unlawful retaliation, as well as policies and procedures for  
26 reporting and investigating any such unlawful retaliation. (Exhibit 7, at 7.) The  
27 undisputed evidence introduced at trial also established that PPG trained its employees  
28 on the policy, promptly investigated Plaintiff’s anonymous complaint, and took

1 corrective action following its investigation. Accordingly, Plaintiff's claim for  
2 punitive damages fails for this additional reason.

3 **II. PLAINTIFF CANNOT RECOVER PUNITIVE DAMAGES BASED ON**  
4 **CONDUCT NOT DIRECTED TOWARDS HIM**

5 California law is clear that in order to recover punitive damages, the plaintiff  
6 must establish that the defendant acted with "oppression, fraud, or malice" specifically  
7 directed toward the plaintiff, and not merely toward third parties. Cal. Civ. Code §  
8 3294(a). Section 3294 requires that the wrongful conduct — whether it be malice,  
9 oppression, or fraud — be "with respect to the plaintiff," meaning the misconduct  
10 must have been committed against the plaintiff personally. California courts have  
11 repeatedly emphasized this principle, holding that "[p]unitive damages are proper only  
12 when the tortious conduct rises to levels of extreme indifference to the *Plaintiff's*  
13 rights, a level which decent citizen should not have to tolerate. *Lackner v. North*, 135  
14 Cal.App.4th 1188, 1210-1212 (2006). Consequently, punitive damages are not  
15 recoverable where the alleged fraud or malicious conduct was directed solely at third  
16 parties rather than the plaintiff himself. Here, Plaintiff appears to argue that his  
17 termination was part of some alleged scheme to defraud Lowe's. Putting aside the  
18 lack of evidence that this occurred — there has been no evidence offered at this trial of  
19 any *actual* financial loss by or material misrepresentations made to Lowe's<sup>2</sup> — Plaintiff  
20 uses this alleged conduct as the sole basis to support a claim for punitive damages.

21 **III. CONCLUSION**

22 Based upon the foregoing, and as the Court has observed during the course of  
23 the trial, Plaintiff has failed to meet his burden as to punitive damages liability. The  
24 admissible evidence at trial does not show, by clear and convincing evidence, that any  
25 director, officer or managing agent of PPG engaged or otherwise participated in  
26 malicious, oppressive or fraudulent behavior when terminating Plaintiff. As a result,

27 \_\_\_\_\_  
28 <sup>2</sup> Nor has Plaintiff offered or will he offer evidence of an officer, director or managing  
agent of PPG who participated in any alleged fraud against Lowe's.

1 Plaintiff claim for punitive damages can and must be adjudicated by the Court in  
2 PPG's favor. PPG respectfully requests that the Court exclude Plaintiff's claims for  
3 punitive damages, including excluding any jury instructions regarding this claim.  
4

5 Dated: April 28, 2025  
6

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